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PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195			REICHLE, KARIN M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/745,006
Filing Date: December 20, 2000
Appellant(s): SAUER, BARBARA O.

MAILED

SEP 06 2005

Group 3700

Mark D. Swanson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6-6-05.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Claimed Subject Matter*

The summary of invention contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the issues in the brief is correct.

(7) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Prior Art of Record

97/39710	KIMBERLY-CLARK	10-1997
	WORLDWIDE, INC.(PCT)	
3,951,150	SCHAAR	4-1976
97/48359	KIMBERLY-CLARK	12-1997
	WORLDWIDE, INC.(PCT)	
4,738,677	FOREMAN	4-1988
4,114,420	IGAUE et al	5-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Language Interpretation

The terminology “discrete pleats” is defined as set forth on page 11, lines 17-18. It is noted “well defined” is considered a relative term.

Issue 1:

Claims 2-7, 9-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimberly Clark PCT ‘710.

With regard to claim 3, the broadest claim, see Figures 10-15, the paragraph bridging pages 2-3, page 8, lines 7-10, page 8, lines 12-22, page 23, lines 30-34, page 24, line 10-page 25, line 26, page 29, line 29-page 30, line 35, page 31, line 24-page 32, line 3, page 35, first paragraph, page 38, lines 8-17 and page 42, first paragraph. It is noted that the claims do not

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require a monolithically formed flap sheet, i.e. the elongated material is 50, 52, the backsheet is 50, the topsheet is the envelope web as disclosed at page 35, first full paragraph, the absorbent layer is 52, the flap sheet or pocket sheet is 102, the pleats are the Z-folded portions of 110, a pocket is defined between the Z-folded portions, see again page 23, lines 30-34, paragraph bridging pages 24-25 (Note liquid could also inherently include liquid fecal material or liquid components of fecal material also) and the first paragraph on page 42, and the point bonding is disclosed at page 31, last paragraph, e.g. points or spots of adhesive bonding, and page 25, lines 8-15.

Issue 2:

Claims 2-7, 9-14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaar '150 in view of Kimberly Clark '359, Igaue et al '420 and Foreman'677.

With regard to claim 3, the broadest claim, see Schaar '150 at Figures 5-8, 10, and col. 3, lines 43-48, the elongated material is 28, 32, 36, the backsheet is 28, the topsheet is 32, the absorbent layer is 36, the flap sheet or pocket sheet is 48, the pleats are A, B and D, E, the pocket is defined by A, B, C, D, E, see col. 1, lines 57-60, col. 4, lines 29-35, and 60-64, col. 5, lines 36-58, i.e. the pocket is defined by the pleats between sheet 48 and liner 32, see especially col. 5, lines 44-50, and the point bonds are 58, see also col. 6, line 3.

Therefore, the Schaar '150 device includes all the claimed structure except that the flap, see 48 in Figures 1 and 2 of '150, is not a separate flap sheet attached by point bonding at an edge disposed toward the back region. Schaar '150 teaches a flap which is integrally formed with the back region. However, see page 12, line 26-page 13, line 10 and page 9, lines 1-11 of '359, i.e. a flap which is integrally formed as part of a region can also be separate sheet attached to that

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region by point bonding, and Figures 10-14 of '420, i.e. a flap which is a separate sheet from the region it is attached to rather than integrally formed therewith can be directly attached to either surface of the liner of that region, and '677, Figures and, e.g., col. 12, lines 24-28, i.e. end flaps may be attached and structured similarly to leg flaps for use on an absorbent article. Therefore, to make the flap integrally formed with the back region of Schaar '150 a flap of a separate sheet directly attached by point bonding as claimed would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by '359, '420 and '677. It is merely noted that the criticality of point bonding as compared to other forms of bonding has not been disclosed, see page 11, lines 16-19 of the instant disclosure.

Issue 3:

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being obvious over Kimberly Clark '710 in view of Igaue et al '420.

With regard to claim 15, the broadest claim, Applicant claims forming a multilayer material of rectangular configuration, removing portions, i.e. producing a final hourglass configuration, and forming pleats in the flap sheet proximate the back region. See cited portions of '710 supra, i.e. '710 teaches a flap sheet 102 attached directly to the liner proximate the back region, see Figures 12-13, which flap is pleated with two discrete longitudinal pleats, i.e. the Z-folded portions of 110 disposed along pocket edge. The '710 patent does not teach the rectangular configuration or removing portions, i.e. forming an hourglass configuration, steps. However, see cited portions of '710 as well as page 22, line 23-page 23, line 2 thereof and column 3, line 60-col. 4, lines 12 and Figures 7-8 of Igaue et al. To employ a rectangular

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material which has a portion removed to create a final hourglass shape as taught by Igaue et al on the '710 device would have been obvious to one of ordinary skill in the art in view of the recognition that such would provide more efficient manufacture, i.e. easier to align rolls of material and shape than align already shaped material, and the desirability of efficiency in manufacture of any article. In so doing, upon definition and identification of the portion of the material which is the rear portion, i.e. removing portions, attachment of tabs steps etc, the pleats in the flap sheet are necessarily "formed" in the region they are proximately attached to, i.e. the rear portion, whether the flap sheet is pleated prior to or after the removing step. The claims do not require pleating an unpleated flap sheet after the removing the portions step. It is merely noted that the criticality of making the article in this manner has not been disclosed in the instant specification, see page 12, first full paragraph thereof.

(10) *Response to Argument*

Issue 1:

Appellant's arguments on pages 5-10 with regard to the '710 reference have been considered but are deemed not persuasive. Before specifically addressing such arguments, Appellant's remarks on page 6, second full paragraph regarding the Advisory action have been noted and Appellant is correct that the claims require direct attachment. The examiner apologizes for comments to the contrary. However, for the reasons which follow, the rejection on '710 is still maintained. Appellant's argue that the '710 reference does not teach a separate flap or pocket sheet directly attached to a fluid permeable body-side liner, attached at peripheral edges to such liner and defining a pocket with such liner because the interpretation of the web as taught

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by '710 to be the body-side liner by the Examiner is an improper redefinition or reclassification of the structure and elements disclosed by the '710 reference. However, Appellant's remarks are narrower than the claim language which does not require, e.g., the "body-side liner" be the most body-side layer or topmost layer, be the most body-side layer for a specific portion of the most body side surface of the article, does not require it, i.e. in its entirety nor only a portion thereof, contact the wearer, does not require it line the remainder of the article rather than, e.g., the backsheet or the core, nor does the claim language, e.g., require the separate flap or pocket sheet be of a specific size but does require it be more bodyside than the "body side liner" where it overlies such. Appellant's arguments are also narrower than the teachings of '710 which disclose the envelope web as a "fluid permeable body-side liner" in that it is fluid permeable and more bodyside than and lines other structures. Since sheet 54 may have apertures, see cited portions of '710 supra, through which the envelope web would be exposed, the web is also the most bodyside liner at those apertures. The sheet 54 as taught by '710 is a separate sheet (see, e.g., the first paragraph on page 35, lines 7-9, Figures 10-15 and the paragraph bridging pages 24-25, i.e. layers 122 bonded to layer 54 are optional, the first full paragraph on page 25, page 31, line 24-page 32, line 3) attached directly to the envelope web by point bonding at the peripheral edges and at an edge disposed toward the back region and forms a pocket therewith. Therefore there is no improper redefinition or reclassification of the structure and elements disclosed by the '710 reference with regard to the structure as set forth by the language of the instant claims.

The rejection of the claims under 35 USC 102 is maintained as proper.

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Issue 2:

Appellant's remarks on pages 10-14 have been considered but are deemed not persuasive in that they are narrower than the teachings of the art and evidence of record. Specifically with regard to Appellant's argument that Schaar alone or in combination with the other prior art does not teach a pleated flap in the use position, such arguments are deemed narrower than the prior art teachings, see the portions of the Schaar reference cited in the prior art rejection supra, especially the Figures, and the prior art rejection, i.e. the secondary references are not used to teach pleats in the flap. With regard to Appellant's arguments that the motivation for combining the prior art would have been deemed applicable to one skilled in the art because the use of a separate sheet would complicate manufacture and/or destroy the expandability of the device, such arguments are considered mere conjecture on the part of Appellant's representative absent collaborating evidence which evidence is not presently of record.

The rejection of the claims under 35 USC 103 is maintained as proper.

Issue 3:

Appellant's remarks on pages 14-15 have been considered but are considered not persuasive for the reasons set forth with regard to Issue 1 supra and, additionally, in that such arguments are narrower than the prior art rejection. With respect to the additional argument of Igaue not teaching forming pleats that define sides of a pocket between the flap sheet and liner, such argument is narrower than the prior art rejection which does not combine Igaue with '710 for that teaching, i.e. the '710 reference is considered to teach such, see response to arguments in Issue 1 supra.

The rejection of the claims under 35 USC 103 is maintained as proper.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Karin M. Reichle

Primary Examiner

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August 30, 2005

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